134-624

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~1399.~~ ~~688.~~ 654

THE UNITED STATES, PLAINTIFF,

vs.

JOSEPH W. LACHER.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 31, 1888.

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1 Circuit court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held in the city of New York, within and for the district and circuit aforesaid, on the second Wednesday of January, in the year of our Lord one thousand eight hundred and eighty-eight, and continued by adjournment to and including the seventeenth day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America, within and for the district and circuit aforesaid, on their oath, present that Joseph W. Lacher, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-seven, at the southern district of New York, and within the jurisdiction of this court, he, the said Joseph W. Lacher, being then and there a person employed in a department of the postal service of the United States, to wit, a clerk in the post-office of the said United States, at the said city of New York, in the district aforesaid, did unlawfully and feloniously embezzle a certain letter then and there in the mail of the United States, which said letter was then and there enclosed in an envelope addressed and directed in words and figures following:

E. Ridley & Sons, Grand, Allen & Orchard, city,

which said letter was then and there entrusted to him, the said
2 Joseph W. Lacher, and had then and there come into his possession in the regular course of his official duties as such clerk as aforesaid, and which said letter was then and there intended to be conveyed by said mail, and which had not then and there been delivered to the person to whom it was then and there addressed and directed as aforesaid, and which said letter then and there contained an article of value, to wit, one United States silver certificate of the denomination and value of one dollar, against the peace of the United States and their dignity, and contrary to the form of the statute in such case made and provided.

SECOND COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Joseph W. Lacher, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-seven, at the southern district of New York, and within the jurisdiction of this court, he, the said Joseph W. Lacher, being then and there a person employed in a department of the postal service of the United States, to wit, a clerk in the post-office of the said United States at the said city of New York, in the district aforesaid, did unlawfully embezzle a certain letter then and there in the mail of the United States, which said letter was then

and there enclosed in an envelope addressed and directed in words and figures following, to wit:

E. Ridley & Sons, Grand, Allen & Orchard, city,

which said letter was then and there intrusted to him, the said Joseph W. Lacher, and had then and there come into his possession in the regular course of his official duties as such clerk as aforesaid, and which said letter was then and there intended to be conveyed by said mail, and which had not then and there been delivered to the person to whom it was then and there addressed and directed as aforesaid, against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided.

3 THIRD COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Joseph W. Lacher, late of the city and county of New York, to wit, on the sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-seven, at the southern district of New York, and within the jurisdiction of this court, he, the said Joseph W. Lacher, being then and there a person employed in a department of the postal service of the United States, to wit, a clerk in the post-office of the said United States at the said city of New York, in the district aforesaid, did unlawfully and feloniously embezzle a certain letter then and there in the mail of the United States, which said letter was then and there enclosed in an envelope addressed and directed in words and figures following, to wit:

E. Ridley & Sons, Grand, Allen & Orchard, City,

which said letter was then and there intrusted to him, the said Joseph W. Lacher, and had then and there come into his possession in the regular course of his official duties as such clerk as aforesaid, and which said letter was then and there intended to be carried and delivered by a letter-carrier and which had not been delivered to the person to whom it was then and there addressed and directed as aforesaid, and which said letter then and there contained an article of value, to wit, one United States silver certificate of the denomination and value of one dollar, against the peace of the United States and their dignity and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Joseph W. Lacher, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-seven, at the southern district of New York, and within the jurisdiction of this court, he, the said Joseph W. Lacher, being then and there a person employed in a department of the postal service of the
4 United States, to wit, a clerk in the post-office of the said United States at the said city of New York in the district aforesaid, did un-

lawfully embezzle a certain letter then and there in the mail of the United States, which said letter was then and there enclosed in an envelope addressed and directed in words and figures following, to wit:

E. Ridley & Sons, Grand, Allen & Orchard, City,

which said letter was then and there intrusted to him, the said Joseph W. Lacher, and had then and there come into his possession in the regular course of his official duties as such clerk as aforesaid, and which said letter was then and there intended to be carried and delivered by a letter-carrier, and which had not then and there been delivered to the person to whom it was then and there addressed and directed as aforesaid, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

STEPHEN A. WALKER,
U. S. Attorney.

To the foregoing indictment the accused appeared in open court on the 19th of January, 1888, and pleaded "not guilty."

(Indictment endorsed:) Filed in open court 17th of January, 1888. Jan. 19, '88, the defendant arraigned and indict. read. Def't pleads not guilty. Jan. 31, '88, the defendant tried. Verdict, guilty.

United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA
vs.
JOSEPH W. LACHER.

This cause came on for trial at a stated term of the circuit court,
5 held at the city of New York on the 31st of January, 1888, before his honor Charles L. Benedict, judge, and a jury.

The following is all the material testimony and evidence given on the trial relating to the counts under which the accused was convicted:

The jury having been duly empaneled and sworn, counsel for the defendant moved the court that, as a matter of law, the district attorney elect whether he would proceed to trial upon the first and third counts of the indictment, founded upon section 5467 of the Revised Statutes of the United States, or upon the second and fourth counts, founded upon section 3891 of the Revised Statutes of the United States.

The district attorney thereupon elected to proceed under the first and third counts, and a judgment nol. pros. was entered as to the second and fourth counts of the indictment.

To sustain the issues on the part of the United States, the district attorney called as a witness Samuel B. Bowne, who, first having been duly sworn, testified that he was superintendent of the post-office delivery of the New York post-office, and had been for seven or eight years. That he had charge of the fourth division of the city delivery. That he knew the defendant and had known him since about the middle of last June. That he was in the post-office in the department of witness and under the witness' charge. The witness, producing paper, stated that that was the oath of office of Joseph W. Lacher as clerk in the post-office. That Lacher was a helper and

stamper, and that it was his duty to back-stamp letters received from out-of-town places for city delivery, and also, when necessary, to post-mark letters dropped in the local drops in the office in New York, and carrying letters from the stamping block to the assorters—what is called feeding the assorters. Among others, he had charge of special-delivery letters, which he was instructed to take to a certain place, keeping those separate from the other letters. That when a letter was put in the drop in the office in New York the defendant's duty was to take it as soon as
6 it was stamped by the stampers and carry it to the person in charge of assorting special-delivery letters for their delivery to the persons to whom they were addressed. That letters dropped in the Park Row side of the letter drops in the office in New York would, in the natural course of business, come to him and be handled by him as above stated. That along in November, 1887, complaints were made of the failure of letters to reach their destination, and that these complaints related to letters which, in the usual course of business, would have gone through Mr. Lacher's hands. Test letters were then put up and tried. Test letter shown the witness was one that was put up. That on the 16th day of December, at about eight o'clock in the evening, the defendant, witness, Mr. Booth, and Mr. Richards were in the inspector's office, and Mr. Lacher was charged with having something about him that did not belong to him, and he finally took from his person and laid upon the table in the room the test letter before shown witness. This letter was open. It contained one dollar silver certificate and a trunk check of Taylor's Hotel.

To further sustain the issues on the part of the United States, the district attorney called as a witness Henry Booth, who, having been first duly sworn, testified:

That he had prepared the letter alleged in the indictment and which had been identified by the preceding witness; had deposited it in the general post-office in the city of New York; that such letter contained a silver certificate of the value of $1; witness dropped the letter in the drop on the Park Row side of the New York post-office at about 7 o'clock in the evening; that the letter afterwards came into the hands of the defendant in the regular course of his official duties, and the defendant at about eight o'clock in the same evening took from his person this letter and delivered it to the post-office officials, and admitted that he had taken and opened it.

Upon cross-examination the witness was asked by the defendant's
7 counsel: Did you expect—was it your expectation when you deposited that letter in mail that it would be delivered to the person to whom it was addressed?

Counsel for the Government having objected to the question, the objection was sustained, and the defendant by his counsel duly excepted.

The district attorney then rested the case for the prosecution.

The defendant's counsel then moved the court to direct a verdict of acquittal, upon the ground that under 5467 no penalty could be imposed for the commission of the offense alleged in the indictment.

This the court refused to do, and the defendant by his counsel then and there duly excepted.

Defendant's counsel then moved that the jury be directed to acquit upon the ground that the charge was not proved.

This the court declined to do, and the defendant by his counsel duly accepted.

The court thereupon charged the jury, who returned a verdict of guilty.

Defendant's counsel thereupon, in open court, moved in arrest of judgment and for a new trial, and upon the same day duly served upon the district attorney a notice, of which the following is a copy:

U. S. circuit court for the southern district of New York.

THE UNITED STATES OF AMERICA
against
JOSEPH W. LACHER.

SIR: Please take notice that I shall move at the next term of this court for the hearing of motions in arrest of judgment in criminal cases,
8 on the record, indictment evidence, and upon the exceptions taken at that trial for an arrest of judgment and for a new trial in the case of The United States of America vs. Joseph W. Lacher, in which the defendant was convicted at a criminal term of the circuit court in and for the southern district of New York, on the 31st day of January, 1888, upon an indictment found under section 5467 of the Revised Statutes of the United States.

Dated New York, January 31st, 1888.

Yours, &c.,

BENJAMIN BARKER, Jr.,
Attorney for the Defendant,
120 *Broadway, N. Y. City.*

To STEPHEN A. WALKER, Esq.,
U. S. Attorney, attorney for Plaintiff.

(Endorsed:) Due service of a copy of the within notice is hereby admitted, this 31st day of Jan., 1888. Stephen A. Walker, U. S. att'y.

The foregoing minutes contain the exceptions taken at the trial, and a condensation of the evidence sufficient to present the said exceptions, and the same are settled by me, the judge who tried the case, pursuant to the rule of March 12th, 1879, for the purpose of securing the right of review to the defendant in accordance with the rule, this 20th day of February, 1888.

CHAS. L. BENEDICT.

9 THE UNITED STATES,
vs.
JOSEPH W. LACHER.
} Embezzlement of letter, § 5467 and 3891.

1888.

Jan. 17. Filed bill of indictment.
" 17. Issued bench-warrant.
" 19. Arraigned: Pleads *not guilty*; trial set down for Jan. 24, 1888.
" 24. Trial further postponed to Jan. 31, '88.
" 31. Tried: Verdict, guilty.

March 2. Motion in arrest of judgment argued before Wallace, Cir. J., Benedict & Brown, J. J.
29. Filed & entered order as to re-argument before Benedict & Brown, J. J.
29. Filed certificate of division.

10 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on the 27th day of March, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The honorable Charles L. Benedict, Addison Brown, J. J.

THE UNITED STATES,
vs.
JOSEPH W. LACHER.

In this case a re-argument at the February term is hereby directed.
March 27, 1888.
(Signed) CHAS. L. BENEDICT.
ADDISON BROWN.

(Endorsed:) U. S. Circuit Court. Filed Mar. 29, 1888. Timothy Griffith, clerk.

11 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Thursday, the 29th day of March, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The honorable William J. Wallace and the honorable Charles L. Benedict, judges.

THE UNITED STATES
vs.
JOSEPH W. LACHER.

This cause coming on to be heard at this term upon the motion in arrest of judgment and for a new trial, before the two judges above mentioned, at such hearing the following questions occurred:

1. Whether an offense against the United States under section 5467, Revised Statutes, is charged in either the first or the third count of the indictment?

2. Whether the embezzlement by a person employed in a department of the postal service of a letter intended to be conveyed by mail and containing an article of value, which shall have come into the possession of such person, is made an offense against the United States by § 5467
12 of the Revised Statutes of the United States, and whether any penalty is prescribed for such embezzlement by said section?

Upon which questions the judges aforesaid were divided in opinion.

Wherefore, at the same term, upon request of the United States attor-

ney, they have caused the questions above stated to be certified under the seal of this court, together with a copy of the indictment and an abstract of the record, to the Supreme Court of the United States for final decision according to law.

(Signed) WM. J. WALLACE.
CHAS. L. BENEDICT.

(Endorsed:) U. S. circuit court, southern district of New York. The United States vs. Joseph W. Lacher. Certificate of division. U. S. circuit court. Filed Mar. 29, 1888. Timothy Griffith, clerk.

13 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages numbered from one to twelve, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the United States of America against Joseph W. Lacher, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this thirtieth day of March, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the said United States the one hundred and twelfth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Indorsement on cover:) No. 1399. The United States, plaintiff, vs. Joseph W. Lacher. S. New York, C. C. U. S. Filed March 31, 1888.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES
vs.
JOSEPH W. LACHER. } No. 1399.

ON CERTIFICATE OF DIVISION OF OPINION, FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES
vs.
JOSEPH W. LACHER. } No. 1399.

ON CERTIFICATE OF DIVISION OF OPINION, FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

And now comes the United States, by the Solicitor-General, and upon the papers and proceedings on record and filed in this case, and the facts herewith submitted, moves the court that the above-stated cause be advanced from its present position on the calendar and assigned for some day convenient for the court, under section 3 of Rule 26.

1. The case is a criminal one, in which the defendant is charged in the indictment, under section 5467, Revised Statutes, as a clerk in the post-office of the United States at New York, with unlawfully and feloniously embezzling a letter then and there in the mail of the United States.

2. The defendant was, on the 31st day of January, 1888, found guilty.

3 On motion for arrest of judgment, the judges of the circuit court certified the following questions on which they differed in opinion:

(1) Whether an offense against the United States under section 5467 of the Revised Statutes is charged in either the first or third count of the indictment.

(2) Whether the embezzlement by a person employed in a department of the postal service of a letter intended to be conveyed by mail, and containing an article of value, which shall have come into the possession of such person, is made an offense against the United States by section 5467 of the Revised Statutes, and whether any penalty is prescribed for such embezzlement by said section.

4. The defendant is now in prison awaiting the disposition of the questions above stated.

5. The counsel for the defendant and the United States attorney join in the request for an advancement of the case, as will appear by reference to a copy of a letter herewith submitted.

G. A. JENKS,
Solicitor-General.

NEW YORK, *March* 30, 1888.

Hon. A. H. GARLAND,
Attorney-General of the United States:

SIR: I have the honor to request that you will ask the Supreme Court to set down for argument at the earliest possible date the case of The United States against Joseph

W. Lacher, in which there has been a certificate of division signed by the judges of the circuit court for the southern district of New York, and in which case the record has this day been sent to the clerk of the Supreme Court.

The grounds of my application are that the case is a criminal one, and *the defendant is now in jail and has been since the date of his arrest on the 16th of December*, 1887.

Trusting that this request will meet with your favorable consideration, I am,

Very respectfully, yours,

BENJAMIN BARKER, Jr.,
Attorney for Defendant Lacher.

I have the honor to join in the above request.

STEPHEN A. WALKER,
U. S. Attorney for Southern District of New York.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES
vs.
JOSEPH W. LACHER. } No. 1399.

UPON A CERTIFICATE OF DIVISION IN OPINION FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

WM. A. MAURY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES
vs.
JOSEPH W. LACHER. } No. 1399.

UPON A CERTIFICATE OF DIVISION IN OPINION FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

The defendant was indicted in the United States circuit court for the southern district of New York as an employé in the post-office at New York, under sections 5467 and 3891, Revised Statutes.

The indictment contained four counts.

The first and third were under section 5467, and charged, the one, that the defendant, being

such employé, did unlawfully and feloniously embezzle a letter in the mail of the United States, setting out the address on the envelope inclosing the letter; that said letter was intrusted to him or came into his possession in the regular course of his official duties; that it was intended to be carried by mail and had not been delivered; and that it contained an article of value, to wit, one dollar silver certificate (p. 1).

The third count is the same as the first, with the exception of the averment that the letter was intended to be carried and delivered by a letter-carrier (p. 2).

To each of the other counts, namely, the second and fourth, a *nolle prosequi* was entered before the trial began (p. 3).

The defendant, having been convicted (p. 5), moved in arrest of judgment, and upon the consideration of that motion the judges of the court were divided in opinion upon the following questions:

1. Whether an offense against the United States under section 5467, Revised Statutes, is charged in either the first or the third count of the indictment?

2. Whether the embezzlement by a person employed in a department of the postal service of a letter intended to be conveyed by mail and containing an article of value, which shall have come into the possession of such person, is made an offense against the United States by § 5467 of the Revised Statutes of the United States, and whether any penalty is prescribed for such embezzlement by said section? (p. 6).

ARGUMENT.

There is really but one question, namely: Are the first and third counts supported by section 5467?

The defendant contends that section 5467 provides for the punishment of no such offense as is described in these counts, but that the offense set out in them comes within section 3891.

It is not denied that section 279 of the act of 8th June, 1872 (17 Stat., 318), made it an offense to embezzle letters containing articles of value, but it is contended that the section substituted for it in the Revised Statutes, namely, section 5467, is so worded as to render it impossible to interpret the section as making it a punishable offense to embezzle a letter containing an article of value.

That the court may see at a glance the difference of phraseology between section 279 of the act of 1872 and section 5467 of the Revised Statutes, we place the two side by side, indicating by italics the words in each which do not appear in the other.

[Act 8th June, 1872, 17 Stat., 318.]

SEC. 279. *That* any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route-agent, letter-carrier, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General, and which shall contain any note, bond, draft, check, warrant, revenue-stamp, postage-stamp, stamped envelope, postal card, money-order, certificate of stock, or other pecuniary obligation or security of the Government, or of any officer or fiscal agent thereof, of any description whatever; any bank-note, bank post-bill, bill of exchange, or note of assignment of stock in the funds; any letter of attorney for receiving annuities or dividends, selling stock in the funds, or collecting the interest thereof;

[Revised Statutes.]

SEC. 5467. Any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters, intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route agent, letter-carrier, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General, and which shall contain any note, bond, draft, check, warrant, revenue-stamp, postage-stamp, stamped envelope, postal card, money-order, certificate of stock, or other pecuniary obligation or security of the Government, or of any officer or fiscal agent thereof, of any description whatever; any bank-note, bank post-bill, bill of exchange, or note of assignment of stock in the funds; any letter of attorney for receiving annuities or dividends, selling stock in the funds, or collecting the interest thereof;

any letter of credit, note, bond, warrant, draft, bill, promissory note, covenant, contract, or agreement whatsoever, for or relating to the payment of money, or the delivery of any article of value, or the performance of any act, matter, or thing: any receipt, release, acquittance, or discharge of or from any debt, covenant, or demand, or any part thereof; any copy of the record of any judgment or decree in any court of law or chancery, or any execution which may have issued thereon; any copy of any other record, or any other article of value, or writing representing the same: any such person who shall steal or take any of the things aforesaid out of any letter, packet, bag, or mail of letters which shall have come into his possession, either in the regular course of his official duties, or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, *every such person* shall, *on conviction thereof, for every such offense, be imprisoned* at hard labor not less than one nor more than five years.

any letter of credit, note, bond, warrant, draft, bill, promissory note, covenant, contract, or agreement whatsoever, for or relating to the payment of money, or the delivery of any article of value, or the performance of any act, matter, or thing; any receipt, release, acquittance, or discharge of or from any debt, covenant, or demand, or any part thereof; any copy of the record of any judgment or decree in any court of law or chancery or any execution which may have issued thereon; any copy of any other record, or any other article of value, or writing representing the same; any such person who shall steal or take any of the things aforesaid out of any letter, packet, bag, or mail of letters which shall have come into his possession, either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be *punishable by imprisonment* at hard labor for not less than one *year* nor more than five years.

If, now, the view contended for by the defendant is correct, the learned revisers of the statutes did their work so imperfectly as to allow section 5467 to be encumbered with the descriptions of the offenses of embezzlement, secretion, and destruction of mail matter of value which appear in the act of 1872, when such descriptions had no possible relevancy to the offense of larceny by

rifling letters, etc., which is also created by this section, for it certainly can not be said that to make the offense of larceny under this section it is necessary that the offenses of embezzlement, etc., or the facts necessary to constitute those offenses, should co-exist with or precede the offense of larceny, as defined by this section.

If the defendant's theory is sound it is difficult to understand why section 5467 did not begin in this way, namely: Any person employed in any department of the postal service who shall steal or take any note, bond, draft, check, warrant, revenue stamp, etc., out of any letter, packet, bag, or mail of letters, which shall have come into his possession, either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be punishable by imprisonment at hard labor for not less than one year nor more than five years.

It is precisely this, and no more, that section 5467 amounts to, if the view of the other side is

well founded, for although that section describes the offenses of embezzlement, secretion, and destruction of letters, etc., containing articles of value, the remarkable theory advanced is that it was the intention of the revisers and Congress to leave the offenses thus described *entirely destitute of the penal sanctions* that attended them in the act of 1872.

The rule is, that no word shall be rejected if by any reasonable construction it may take effect, or, as Justice Doddridge quaintly expressed it, "*every string ought to give its sound*," and it becomes important to consider whether there exists any sufficient reason why this court should take upon itself the grave responsibility it is asked to assume, of consigning to silence the solemn words of a public statute.

It must be borne in mind that the function of the revisers or commissioners who compiled the Revised Statutes was merely "to *revise*, *simplify*, *arrange*, *and consolidate* all statutes of the United States, general and permanent in their nature, which shall be in force at the time such commis-

sioners may make the final report of their doings" (Rev. Stat., appendix, p. 1089); and hence, as this court has said, the well-established rule in the several States applies to this revision of laws, that the antecedent laws will be presumed to be in force except in cases where the language of the revision rebuts and displaces the presumption, as in the case of The United States *v.* Bowen (100 U. S., 508). This presumption applies to criminal as well as other legislation. (Viterbo *v.* Friedlander, 20 U. S., 726; Cambria Iron Co. *v.* Ashburn, 118 U. S., 57; Deffeback *v.* Hawke, 115 U. S., 402; Parramore *v.* Taylor, 11 Gratt., 220; Taylor *v.* Delancy, 2 Caines Cases, 143.)

In all cases of doubt, therefore, it is not only proper, but necessary, to refer to the original statutes which have become incorporated in the revision, to ascertain precisely what the law was, for in such cases the old law will be conclusively presumed to have been intended to remain in force.

Now, can it be said properly, as contended by the defendant, that the language of section 5467

makes it *perfectly clear*, as in Bowen's case, that Congress intended to repeal so important a provision as that defining and punishing the offense of embezzling mail matter of value, and to abolish the long-standing distinction between embezzling mere letters, etc., and letters, etc., containing things of value? If Congress had such a purpose, we make bold to say it resorted to the most remarkable way to show it that was perhaps ever employed before by a body of law-makers.

So far from it, we maintain with confidence that the words of the section do not permit the mind to doubt as to the legislative intent to create and punish the offenses of secreting, embezzling, and destroying letters, etc., containing matter of value. The only question that can be raised upon the language of the section is one of *grammatical propriety*, which the law does not condescend to settle any more than it does a question as to punctuation.

Criminal statutes, it is sometimes said, are not liberally construed, but it is also laid down that they are not to be defeated by refining. The

question is one of intent, and the words of such statutes are made to yield and ply to a manifest intention. Thus the enactment that made it treason to kill a master was held to include a mistress (Dwarr. Stat., 635; U. S. *v.* Wiltberger, 5 Wh., 75; Am. Fur. Co. *v.* U. S., 2 Pet, 358; U. S. *v.* Morris, 14 Pet., 464; U. S. *v.* Kerby, 7 Wall., 482).

The old distinction, however, between criminal and other statutes as to latitude and strictness of construction seems merged in the more sensible modern rule that all statutes should be interpreted so as best to subserve the intention. (Maxwell, Stats., 319, 2 ed., 1883)

The case of Ruther *v.* Harris (L. R., 1 Exch. D., page 97), decided in 1876, is a good illustration of the modern rule.

An act of Parliament provided that—

> No person shall fish for, catch, or kill by any means other than a rod and line any salmon between 12 o'clock at noon on Saturday and 6 o'clock on Monday morning; and any person acting in contravention of this section shall forfeit all fish taken by him, and any net or movable instrument used by him in taking the same.

The respondents fished for salmon with a net during the prohibited hours, but as they did not

catch any fish it was contended in their behalf that the net they had used for the purpose of taking salmon had not become forfeited. The summons was dismissed by the justices, but on the appeal that decision was reversed and the net held to be forfeited. Mr. Baron Cleasby said:

> No doubt the language at first sight appears to bear only the meaning put upon it by the justices; and we are bound to see that the construction contended for by the appellant's counsel is clearly established; but I think that the section must mean that the net or movable instrument is to be forfeited if it is used for the purpose of taking salmon.

And Mr. Justice Grove said:

> It is no doubt a rule of interpretation that the grammatical construction of a sentence must be followed, but this is not to be adopted when it leads to difficulty. I think it plain that the language of the section is not strictly accurate and grammatical; and in my opinion it was intended that the net should be forfeited and the penalty incurred whenever persons were unlawfully using it in fishing, although no salmon might be caught.

This case shows that where the legislative intent is manifest the rules of grammar must give way.

But if any doubt exists in the reader's mind as to whether the penalty denounced by section 5467 applies to larceny only, the offense last de-

fined in the section, or also to the offenses defined in the preceding member of the section, that doubt will be immediately removed by reference to section 279 of the original act (*supra*), on which the section in question purports to be founded.

The very point now in controversy arose and was decided in United States *v.* Pelletrau (14 Blatch., 126) on a motion to quash an indictment under section 5467. In disposing of the motion the learned judge (Benedict) says:

> The averments of the indictments are that the accused was a person employed as a letter-carrier in the postal service of the United States, and embezzled a certain letter, described, which was intended to be conveyed by mail, and which contained an article of value, described, which said letter had been entrusted to the accused, and had come into his possession as such letter-carrier. The contention in behalf of the accused is that the only offense created by section 5467 is that of stealing or taking things out of a letter, packet or bag. * * * It is contended that this section omits to say that persons doing any of the acts that are mentioned in the section prior to the last semicolon in it shall be liable to punishment, and makes punishable only the acts mentioned after the words "any such person who shall," following the semicolon. But this construction of the section is entirely too strict even for a criminal statute. It is conceded that if the conjunction "and" had been inserted between the semicolon and the words "any," the statute would be complete. But the omission of the conjunction, by way of ellipsis, in such statutes, is a very com-

> mon thing. Sections 5463 and 5464, just above, present several instances of such omissions. The intention of the statute is as plain without the conjunction as with it. Manifestly, two classes of offenses are intended to be created, one relating to the embezzlement of letters, &c., the other relating to stealing the contents of letters; and this intention is carried out if we suppose an ellipsis, while, without an ellipsis, a very considerable part of the section is useless and void. According, then, to the familiar rule of construction, the statute should be read so as to render its language effective, and, by inserting the conjunction, this is done. So read, it creates the offense charged in the indictment. The motion to quash is, therefore, denied.

To the same effect is *United States* v. *Jenther* (13 Blatch., 335), which was a motion in arrest of judgment after conviction under section 5467. In denying the motion, the same learned judge says:

> The accused was indicted under section 5467 of the Revised Statutes, charged with embezzling a letter intrusted to him as a carrier, to be carried and delivered by him. * * * The section under which the indictment is framed is devoted to the creation of two kinds of offenses—one appertaining to letters, the other to contents of letters. In creating the offense of embezzling letters, the statute describes the subject of the offense as a letter intended to be conveyed by mail, or to be carried or delivered by a mail-carrier, * * * and which shall contain an article of value. This portion of the section is, to all appearances, complete, and there is nothing in it to indicate that it does not state all the ingredients of the offenses intended to be created thereby. The statute then passes to another subject, namely, the contents of letters, and creates certain offenses in respect thereto.

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The case of the *United States* v. *Fralkenhainer* (21 Fed. Rep., 624), although not arising on the section in question, arises on section 5469, which presents the identical question presented here, and is decided by Judge Brewer in exact conformity to the view of section 5467, taken by Judge Benedict, in the cases above cited.

Opposed to these cases is *United States* v. *Long* (10 Fed. Rep., 879), in which Judge Pardee summarily disposes of the question now in hand in the way contended for by the defendant. But it is submitted that this case can not stand against the well-considered judgments referred to in support of the opposite view, to which may be added *United States* v. *Baugh* (1 Fed. Rep., 784).

If we adopt the theory of the defense, we must conclude that Congress intended to abolish the time-honored distinction between embezzlement of an ordinary letter and one containing some article of value, thus punishing the latter with the mild penalty prescribed for the former, and ignoring the principle that one engaged in the execution of an unlawful purpose is answerable for all the consequences that proceed from his

acts, whether he intended them or not—a principle upon which Congress undoubtedly proceeded in declaring that embezzling letters containing articles of value should be punished more severely than embezzling letters not containing such articles, whether the offender knew the contents to be valuable or not.

But the contention that the offense of embezzling letters, etc., containing articles of value is covered by section 3891 is completely refuted by that section itself and by section 146 of the act from which it was taken. We place the two side by side.

[Act approved June 8, 1872.]

SEC. 146. That any person employed in any department of the postal service who shall unlawfully detain, delay, or open any letter, packet, bag, or mail of letters intrusted to him, or which shall have come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route-agent, letter-carrier, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General; any such person who shall secrete, embezzle, or destroy any such letter,

[Revised Statutes.]

SEC. 3891. Any person employed in any department of the postal service who shall unlawfully detain, delay or open any letter, packet, bag or mail of letters intrusted to him, or which has come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail messenger, route agent, letter-carrier or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster General; or who shall secrete, embezzle or destroy any such letter, packet, bag or mail of let-

packet, bag, or mail of letters, as aforesaid, *which shall not contain any security for or assurance relating to money or other thing of value*, every such person shall, on conviction thereof, for every such offense, forfeit and pay a penalty of not exceeding five hundred dollars, or be imprisoned not more than one year, or both, at the discretion of the court.

ters, *although it does not contain any security for or assurance relating to money or other thing of value*, shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, or by both.

We maintain that the words in this section, "*although it does not contain any security for or assurance relating to money or other thing of value*," point directly to section 5467 as defining and punishing the embezzlement of letters, etc., containing articles of value, just as in section 5469, making it penal for "*any* person" to steal, fraudulently obtain, or open valuable letters, etc., the words "*although not employed in the postal service*" point to those sections in which similar acts by persons employed in that service are made punishable.

It is, therefore, respectfully submitted that both questions should be answered in the affirmative.

WM. A. MAURY,
Assistant Attorney-General.

Office Supreme Court U. S.
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CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES
vs.
JOSEPH W. LACHER. } No. 988.

UPON A CERTIFICATE OF DIVISION IN OPINION FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES ON REARGUMENT.

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UPON A CERTIFICATE OF DIVISION IN OPINION FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES ON REARGUMENT.

The defendant was indicted in the United States circuit court for the southern district of New York as an employé in the post-office at New York, under sections 5467 and 3891, Revised Statutes.

The indictment contained four counts.

The first and third were under section 5467. The first charged, that the defendant, being such

employé, did unlawfully and feloniously embezzle a letter in the mail of the United States setting out the address on the envelope inclosing the letter; that said letter was intrusted to him or came into his possession in the regular course of his official duties; that it was intended to be carried by mail and had not been delivered; and that it contained an article of value, to wit, one-dollar silver certificate (p. 1).

The third count is the same as the first, with the exception of the averment that the letter was intended to be carried and delivered by a letter-carrier (p. 2).

To each of the other counts, namely, the second and fourth, a *nolle prosequi* was entered before the trial began, the defendant having moved the court that the district attorney should elect "whether he would proceed to trial upon the first and third counts of the indictment, founded upon section 5467 of the Revised Statutes of the United States, or upon the second and fourth counts, founded upon section 3891 of the Revised Statutes of the United States" (p. 3).

The defendent, having been convicted (p. 5), moved in arrest of judgment, and upon the consideration of that motion the judges of the court were divided in opinion upon the following questions:

1. Whether an offense against the United States under section 5467 Revised Statutes is charged in either the first or the third count of the indictment?

2. Whether the embezzlement by a person employed in a department of the postal service of a letter intended to be conveyed by mail and containing an article of value, which shall have come into the possession of such person, is made an offense against the United States by § 5467 of the Revised Statutes of the United States, and whether any penalty is prescribed for such embezzlement by said section? (p. 6).

ARGUMENT.

Section 5467 Revised Statutes, upon which the indictment is founded, is as follows:

[Any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters, intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route agent, letter-carrier, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General, and which shall contain any note, bond, draft, check, warrant, revenue-stamp, postage-stamp, stamped envelope, postal-card, money-order, certificate of stock, or other pecuniary obligation or security of the Government, or of any officer or fiscal agent thereof, of any description whatever; any bank-note, bank post-bill, bill of exchange, or note of assignment of stock in the funds; any letter of attorney for receiving annuities or dividends, selling stock in the funds, or collecting the interest thereof; any letter of credit, note, bond, warrant, draft, bill, promissory note, covenant, contract,

or agreement whatsoever, for or relating to the payment of money, or the delivery of any article of value, or the performance of any act, matter, or thing; any receipt, release, acquittance, or discharge of or from any debt, covenant, or demand, or any part thereof; any copy of the record of any judgment or decree in any court of law or chancery or any execution which may have issued thereon; any copy of any other record, or any other article of value, or writing representing the same]; any such person who shall steal or take any of the things aforesaid out of any letter, packet, bag, or mail of letters which shall have come into his possession, either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be punishable by imprisonment at hard labor for not less than one year nor more than five years.

The contention on which the motion in arrest of judgment was placed, and which is urged in this court, is that no indictment against a post-office employé for embezzling a letter containing an article of value to be carried by mail or a mail carrier, etc., can be sustained under this section, and, as a necessary consequence, that no indictment will lie against any such person for secreting or destroying any such letter, but that the *only* offense punishable under the section is that of stealing or taking an article of value from any such letter by a post-office employé.

According to this contention, the offenses of secreting, embezzling, and destroying letters con-

taining articles of value, described in the section, have been left by Congress *without any penal sanction whatever*, thus rendering vain and inoperative, as vindicatory legislation, all that part of the section which we have thrown within brackets, and degrading its imperial words to the humble office of making certain the general references "*any such person*" and "*any of the things aforesaid*" which occur in the following part of the section:

Section 5467 was intended by the revisers to take the place of section 279 of the act of 8th June, 1872 (17 Stat., 318). The two sections here follow in parallel columns, the differences between them being indicated by italics:

[Act 8th June, 1872.]	[Revised Statutes.]
SEC. 279. *That* any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters, intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route-agent, letter-carrier, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or	SEC. 5467. Any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters, intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route agent, letter-carrier, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or

branch post-office established by authority of the Postmaster-General, and which shall contain any note, bond, draft, check, warrant, revenue-stamp, postage-stamp, stamped envelope, postal card, money-order, certificate of stock, or other pecuniary obligation or security of the Government, or of any officer or fiscal agent thereof, of any description whatever; any bank-note, bank post-bill, bill of exchange, or note of assignment of stock in the funds; any letter of attorney for receiving annuities or dividends, selling stock in the funds, or collecting the interest thereof; any letter of credit, note, bond, warrant, draft, bill, promissory note, covenant, contract, or agreement whatsoever, for or relating to the payment of money, or the delivery of any article of value, or the performance of any act, matter, or thing; any receipt, release, acquittance, or discharge of or from any debt, covenant, or demand, or any part thereof; any copy of the record of any judgment or decree in any court of law or chancery, or any execution which may have issued thereon; any copy of any other record, or any other article of value, or writing representing the same; any such person who shall steal or take any of the things aforesaid, out of any letter, packet, bag, or mail of letters which shall have come into his possession, either in the regular course of his official duties, or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, *every such person* shall, *on conviction thereof, for every such offense, be imprisoned* at hard labor not less than one nor more than five years.

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It is well settled that if a doubt arises as to the meaning of a provision of the Revised Statutes, resort may be had to the original statute from which such provision was taken for the purpose of ascertaining that meaning, the presumption being in favor of the continuance in the revision of the law as it stood before the revision went into effect.

United States *v.* Bowen, 100 U. S., 508, 513.

United States *v.* Hirsch, *ib.*, 33.

Myer *v.* Car Co., 102 *ib.*, 1, 11.

Northern Pacif. R. R. Co. *v.* Herbert, 116 *ib.*, 642.

Cambria Iron Co. *v.* Ashburn, 118 *ib.*, 57.

Deffeback *v.* Hawke, 115 *ib.*, 402.

Taylor *v.* Delancy, 2 Caine's Cases, 143. Parramore *v.* Taylor, 11 Gratt., 220.

In his vigorous opinion in Taylor *v.* Delancy Mr. Justice Spencer said (p. 157):

> My opinion is founded on this proposition, that where the law antecedently to the revision was settled, either by clear expressions in the statutes or adjudication on them, the mere change of phraseology shall not be deemed or construed a change of the law, unless such phraseology evidently purports an intention in the legislature to work a change. A contrary construction might be productive of the most dangerous consequences. The quaintness of expression in some of the ancient British statutes, the circumstance of there

being several statutes on the same subject, required in many cases an entire change of language, but it has never until now been contended that thereby an alteration of the law was to be inferred.

This language is perfectly applicable to the work of the revisers of the Statutes of the United States, whose commission was "*to revise, simplify, arrange, and consolidate.*" (Rev. Stat., App., p. 1089.) In a word, the office of the revisers was to make a systematic presentation of the Statutes of a general and permanent nature, simplifying and consolidating where advisable.

We look in vain for any indication in the language of section 5467 of a purpose to change section 279 of the act of June 8, 1872, for which section 5467 was substituted. Each section defines, *first*, the offenses of secreting, embezzling, and destroying letters, etc., containing articles of value; and, *secondly*, the offenses of stealing and taking from such letters, etc., articles of value. To this extent the two sections are *identical.*

Wherein do they differ? We now present them side by side in such a way as to bring their differences into relief:

SEC. 279. *That* any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter

* * * *
* * * *

which shall contain any note, bond * * *
* * * *
* * * ; any such person who shall steal or take any of the things aforesaid out of any letter, * * *
* * * *
* * * *

every such person shall, *on conviction thereof, for every such offense be imprisoned* at hard labor not less than one nor more than five years.

SEC. 5467. Any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter,

* * * *
* * * *

which shall contain any note, bond * * *
* * * *
* * * ; any such person who shall steal or take any of the things aforesaid out of any letter, * * *
* * * *
* * * *

shall be *punishable by imprisonment* at hard labor for not less than one *year* nor more than five years.

Now, it is claimed by the defendant that section 5467 makes punishable only the offense of stealing and taking valuables from letters, because it says that "any such person who shall steal, etc., shall be punishable, etc.," thereby making it impossible, without grammatical impropriety, to connect the punishment denounced with the previously described offenses of secreting, embezzling, or destroying letters containing articles of value; whereas section 279 of the act of 1872, after defining the offenses described in section 5467, says "*every such person* shall, on conviction thereof, for every such offense,

etc." It is thus apparent that if the words "*every such person*" had been inserted in section 5467 before the words "*shall be punishable*," every word of the section could have effect without departing from grammatical construction.

Said the court in United States *v.* Pelletrau (14 Blatch., 126), dealing with the very question now in hand on a motion to quash the indictment, "it is conceded that if the conjunction 'and' had been inserted between the semicolon and the word 'any,' the statute would be complete." The same may be said of the effect upon the sense of inserting in the section the conjunction *or* between the semicolon and the word "any."

The imaginary difficulty in the case rests on a *grammatical nicety.* The *intention* of Congress, which is what we are seeking, is *manifest*, and the single question is, Shall that manifest intention prevail over or be frustrated by a grammatical *lapsus?*

Undoubtedly the *intention* must prevail. "The rule as to grammatical construction," says Pol-

lock, B., "is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be perfectly clear from the contents of the same document that the apparent grammatical construction can not be the true one, then that which upon the whole is the true meaning shall prevail *in spite of the* grammatical construction of a particular part of it." (Waugh *v.* Middleton, 8 Ex., at p. 537; Wilberforce on Statutes, pp. 113, 114; Hardcastle on Statutes, 28, 29.)

This court will never declare an act of Congress unconstitutional on doubtful premises, and it has been astute to find reasons to avoid ascribing to Congress the intention to override a treaty (Chew Heong *v.* The United States, 112 U. S., p. 536), or to put a fetter on a power lodged in the Executive by the Constitution (Blake *v.* The United States, 103 U. S. 227). It may be presumed, then, that this court will be slow to hold that Congress has done the absurd thing of describing with particularity the offenses of secreting, embezzling, and destroying letters,

etc., containing valuable matter, in section 5467, without the purpose of annexing the penalty denounced in that section in connection with the associated and kindred offenses of stealing or taking a thing of value from a letter, etc. It is in a high degree disparaging to Congress to say that it had no purpose to make punishable, by section 5467, the grave offenses of secreting, embezzling, and destroying letters containing articles of value. If it had no such purpose, why did it define those offenses? Borrowing the words of the court in United States v. Stern (5 Blatch, 512), "to suppose that Congress, while pretending to remedy such an evil, intended to pass an act which by its own express words was to be rendered wholly ineffective under any possible circumstances, is to suppose Congress to be capable of deliberate folly, if not of fraud upon the public. I entertain no doubt that it is the duty of a court to prevent such a result, and by treating the words in question as surplusage, to carry out the intention of Congress as manifested by the passage of an act on the subject in question,

and by the various provisions which are incorporated in the act."

By section 279 of the act of 1872, the offenses of secreting, embezzling, and destroying, etc., are punishable precisely as the other offenses contained in that section of stealing and taking valuable things from letters, etc.; and what is more certain than that Congress intended to continue to visit all these offenses with the same punishment as the act of 1872 had done?

When we consider the haste in which acts of Congress are sometimes drawn, and that it often happens that they are the work of several persons, it would be alarming, indeed, if the principle were established that a statute could not have effect contrary to its grammatical construction.

It may be instructive to add what the supreme court of Alabama said on this subject in Thompson *v.* The State (20 Ala., 62):

> The inartificial manner in which many of our statutes are framed, the inaptness of expressions frequently used, and the want of perspicuity and precision not unfrequently met with, often require the court to look less at the letter or words of the statute than at the context, the subject-matter,

the consequences and effects, and the reason and spirit of the law, in endeavoring to arrive at the will of the law-giver. Stradling *v.* Morgan, 1 Plowd., 260; 2 *ib.*, 463; 4 Litt., 377, and cases cited; 1 U. S. Dig, 484.

We hope to be able to show now by a series of well-considered cases that no such rule has ever been applied in construing criminal or civil statutes.

In Turner *v.* the State (40 Ala., 21) the indictment was under section 3178 of the code as amended by the act of 23d January, 1866 (acts 1865–'6, p. 121). Section 3178 provided that any person who buys, receives, conceals, or aids in the concealment of, any personal property, etc., must, on conviction, be imprisoned in the penitentiary not less than two or more than five years. The amendatory act added to the section these words, "*or by fine and imprisonment, one or both, at the discretion of the jury trying the same,*" thus making section 3178 read, in so far as relates to punishment, as follows:

> Must, on conviction, be imprisoned in the penitentiary not less than two nor more than five years, or by fine and imprisonment, one or both, at the discretion of the jury trying the same.

Now, notwithstanding the argument that it was inadmissible, because *ungrammatical*, to supply

any words between the particle "*or*" where it first occurs in the amendment and the words "by fine and imprisonment" but "*be imprisoned*," and as the words so supplied made nonsense the amendatory law must be disregarded *as unintelligible*, the court held that the amendatory law showed a clear purpose to provide alternative punishments, at the discretion of the jury, and that "by supplying the words '*be punished*' after the word '*or*,' where it first occurs in the amendment, so that it will read '*or be punished*,' etc., what is *simply a verbal inaccuracy* will *be corrected*" (p. 26). One judge dissented on the grammatical ground that as the ellipsis in the amendatory law could only be supplied with the words "*be imprisoned*," thus making no sense, the law was void (p. 31). See also *Worrell* v. *The State* (12 Ala., 732).

In precise accordance with this decision is the late English case of *Ruther* v. *Harris* (L. R., 1 Ex. Div., p. 97).

The act of 24, 25 Viet., c. 109, s. 21, enacted—

> No person shall fish for, catch, or kill by any means other than a rod and line any salmon between 12 o'clock at noon on Saturday and 6 o'clock on Monday morning; and any per-

> son acting in contravention of this section shall forfeit all fish taken by him, *and any net or movable instrument used by him in taking the same.*

The respondents fished for salmon with a net during the prohibited hours, but *as they did not catch any fish it was contended in their behalf that the net they had used for the purpose of taking salmon had not become forfeited.* The summons was dismissed by the justices, but on the appeal that decision was reversed and the net held to be forfeited. Mr. Baron Cleasby said:

> No doubt the language at first sight appears to bear only the meaning put upon it by the justices; and we are bound to see that the construction contended for by the appellant's counsel is clearly established; but I think that the section must mean that the net or movable instrument is to be forfeited if it is used for the purpose of taking salmon.

And Mr. Justice Grove said:

> It is no doubt a rule of interpretation that the grammatical construction of a sentence must be followed, but this is not to be adopted when it leads to difficulty. I think it plain that the language of the section is not strictly accurate and grammatical; and in my opinion it was intended that the net should be forfeited and the penalty incurred whenever persons were unlawfully using it in fishing, although no salmon might be caught.

Where the words of a statute seemed to authorize a witness answering criminating questions before an election committee to demand the protection of a certificate if he answered the questions put to him, the court held that the

statute must be read as though it contained the provision that the committee asking the questions should not grant the certificate if they believed the witness's answers false or evasive in any respect. (The Queen *v.* Hulme, L. R., 5 Q. B., 377.)

And the Supreme Court of Pennsylvania held that where an act affixed a penalty of *not less than one* nor more than three hundred dollars the *minimum* penalty was one *hundred* dollars (North *v.* Peck, 7 Pa. St., 268).

The Supreme Court of Missouri held that the provision of the State insurance law forbidding any insurance company to do business until it had $100,000 of its capital paid in and invested in stocks or bonds of the State or in Treasury notes or stocks of the United States "*or in notes or bonds secured by mortgages or deeds of trust on unincumbered real estate worth at least double the amount loaned thereon,*" should be read as though it contained the provision that "*the unincumbered real estate*" referred to *should be situate in the*

State of Missouri (State *ex rel.* Ins. Co. *v.* King, 44 Mo., 283).

These cases and the others following next hereupon fully support Mr. Hardcastle in his remark (Statutes, p. 44) that "where the alternative lies between either supplying words by implication or adopting a construction which deprives certain existing words of all meaning, it is usual to supply the words." (*In re* Wainwright, 1 Phillips, 258; Townsend *v.* Deacon, 3 Ex., 706; Garby *v.* Harris, 7 Ex., 591; Huxam *v.* Wheeler, 3 H. & C., 76; Reg. *v.* Dowling, 8 E. & B., 606.) These cases are sufficient to establish the principle advanced, and it would be quite unprofitable to add to the number given.

To consign to silence all that part of section 5467 which relates to the offenses of secreting, embezzling, and destroying letters, etc., containing valuable matter, would be to disregard the great canon that "a statute ought to be so construed that, *if it can be prevented*, no clause, sentence, or word shall be *superfluous, void, or insignificant*." (*R.* v. *Bishop of Oxford*, L. R., 4 Q.

B. D., 261; *Comm.* v. *Alger*, 7 Cush., 89; Wilberforce Stat., p. 118.) It was in enforcing this same principle that Mr. Justice Doddridge said, in *Blamford* v. *Blamford* (3 Buls., 103), that "*every string ought to give its sound.*" In *Goodal's case*, 5 Rep., 99*a*, it was said that the law "will never reject any word, *if by any reasonable construction it may take effect.*" * * *

The courts, says a legal classic, will not "cavil about the propriety of words when the intent of the party appears, but will rather apply the words to fulfill the intent *than destroy the intent by reason of the insufficiency* of the words" (Broom Max. [523]).

No argument in support of the defendant's position can be deduced from the familiar rule that criminal statutes must be taken strictly and in favor of the accused, because that rule has no application to cases other than those where there is ambiguity and doubt as to intent. But here there is no ambiguity or doubt as to the intent of Congress to make punishable the offenses of se-

secreting, embezzling, and destroying letters containing valuable matter.

This intention being clear the rule applicable to the kinds of statutes, without exception, must be enforced, namely, that where the intention is clear it must be faithfully carried out.

How otherwise can we understand the ruling that an enactment making it treason to kill a master *included a mistress* (Dwarr., Stat., 635), or the language of this court "that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature" (*U. S.* v. *Wiltberger*, 5 Wh., 75; *Am. Fur. Co.* v. *U. S.*, 2 Pet., 358; *U. S.* v. *Morris*, 14 Pet., 464).

When we reflect that even so late as the time of Sir Samuel Romilly the number of capital offenses in England was *two hundred and thirty*, it is hardly to be marveled at that English courts have sometimes, in tenderness for human life, construed criminal laws so as to defeat their intent. But with the mitigation of punishments has come

a corresponding reaction in the application of the canon, that penal laws must be construed strictly in favor of the accused. Says an eminent writer on this branch of the law, Sir Peter Benson Maxwell:

> The rule which requires that penal and some other statutes shall be construed strictly was more rigorously applied in former times, when the number of capital offenses was one hundred and sixty or more; when it was still punishable with death to cut down a cherry-tree in an orchard, or to be seen for a month in the company of gipsies. But it has lost much of its force and importance in recent times, *since it has become more and more generally recognized that the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning, and to promote its object.* It was founded, however, on the tenderness of the law for the rights of individuals, and on the sound principle that it is for the legislature, not the court, to define a crime and ordain its punishment. (Stat., p. 318, 2 Ed., London, 1883.)

To this may be profitably added what fell from Wheeler, J., in *Randolph* v. *The State* (9 Texas, 523). He said:

> It is true that penal statutes must be construed strictly, and very great strictness has been observed in the construction of those of the most highly penal character. As in the familiar instance given by Blackstone of the construction of the statute of 14 Geo. II., c. 6, which made the stealing of sheep or other cattle felony without the benefit of clergy. These general words, "or other cattle," were looked upon as too loose to create a capital offence, and the act was held to extend to nothing but sheep. This strictness, however, was adopted in favor of life; and it has never been observed in the construction of statutes enacted for the punishment of mere misdemeanors, or those minor offences which are not punished with great rigor. It has been said by very high authority, and such is the uniform language of the courts, that, though penal statutes are to be construed strictly, they are not to be construed so strictly as to defeat the obvious

intention of the legislature. The words of a statute are not to be narrowed to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature had obviously used them, would comprehend. (5 Wheat., R. 76, 94.)

In construing statutes, penal as well as others, an interpretation must never be adopted that will defeat the purpose for which the enactment was obviously intended. (9 Wheat., R. 381.)

If words of a statute may be *rejected* altogether, as in *U. S.* v. *Stern* (5 Blatch., 512), if a statute may be construed contrary to the letter, as in the case reported in Fitzherbert's Abridgment and cited with approbation by the Privy Council (8 Moore P. C. Cas., 424, *Ruckmaboye* v. *Lulloobhoy*), where, to a plea that the plaintiff was a year and a day after the fine levied within the four seas and did not claim, it was replied by the plaintiff that he was at that time in Scotland the whole year and a day, without that he was in England, and held by the court that the replication was sufficient, Scotland being another realm by itself and hence *not within the four seas*, in the hidden sense of the statute, and as in the case of *Silver* v. *Ladd* (7 *Wall.*, 219), where this court held that an "unmarried woman" came within the term "single man," and as in the case of *Reiche* v. *Smythe* (13 *Wall.*, 162), where it was

held that "*birds*" did not fall within a statute levying a duty on "horses, mules, hogs, and *other live animals*," it is not going any farther to allow words to be supplied.

When the intent calls for the presence of certain omitted words, such words are "*virtually* written," as said Mr. Justice Coleridge in the great case of *Gwynne* v. *Burnell* (7 Cl. and Fin., p. 607), and it is familiar law that what is necessarily implied is as much a part of a writing ing as what is expressed.

And why should the courts not possess the power of supplying words unintentionally omitted by the legislature? This power is no greater than the one undeniably possessed and daily exercised by them, namely, *that of supplying the meanings of the words actually used.*

Almost every word in a language is a fasciculus of many different meanings, and no one can tell what a given word in a writing signifies without a knowledge of the context in which that word occurs. It was only by a consideration of the context in which it appears that this court

was able to settle which one of the various senses of the word "*necessary*" was intended by the framers of the Constitution in the residuary grant of power, "to make all laws necessary and proper," etc. (Cons.,, Art. I, sec. 8, cl. 18; *McCullough* v. *Maryland*, 4 Wheat., 413.) This idea of the indeterminateness of language is thus given by Sir William Hamilton. He says:

> All languages by the same word express a multitude of thoughts more or less differing from each other. Now, what is the consequence of this? It is plain that if a word has more than a single meaning attached to, it when it is employed it can not of itself directly and peremptorily suggest any definite thought; all that it can do is vaguely and hypothetically to suggest a variety of different notions; and we are obliged, from a consideration of the context—of the tenor, of the general analogy, of the discourse, to surmise, with greater or less assurance, with greater or less precision, what particular bundle of characters it was intended to convey. Words, in fact, as languages are constituted, do nothing more than suggest—are nothing more than hints; hints, likewise, which leave the principal part of the process of interpretation to be performed by the mind of the hearer.

Possessing, then, this power to reduce to certainty the uncertainty of language, is it any greater power for the courts to be able to say that there is a plain manifestation of legislative intent in a statute, notwithstanding the omission of one or more words, to say, coming to the matter in hand, that it is perfectly clear that Congress, in section 5467, intended to define and

make punishable the offenses of secreting, embezzling, and destroying letters, etc., containing things of value, the one punishment denounced being by necessary intendment applicable to all the offenses described in the section, just as it had been under section 279 of the act of 1872.

The very point now in controversy arose and was decided in *United States* v. *Pelletrau* (14 Blatch., 126) on a motion to quash an indictment under section 5467. In disposing of the motion the learned judge (Benedict) says:

> The averments of the indictments are that the accused was a person employed as a letter-carrier in the postal service of the United States, and embezzled a certain letter, described, which was intended to be conveyed by mail, and which contained an article of value, described, which said letter had been entrusted to the accused, and had come into his possession as such letter-carrier. The contention in behalf of the accused is that the only offense created by section 5467 is that of stealing or taking things out of a letter, packet or bag. * * * It is contended that this section omits to say that persons doing any of the acts that are mentioned in the section prior to the last semicolon in it shall be liable to punishment, and makes punishable only the acts mentioned after the words "any such person who shall," following the semicolon. But this construction of the section is entirely too strict even for a criminal statute. It is conceded that if the conjunction "and" had been inserted between the semicolon and the words "any," the statute would be complete. But the omission of the conjunction, by way of ellipsis, in such statutes, is a very common thing. Sections 5463 and 5464, just above, present several instances of such omissions. The intention of the statute is as plain without the conjunction as with it. Manifestly, two classes of offenses are intended to be created, one relating to the embezzlement of letters, etc., the other relating to stealing the contents of letters; and

> this intention is carried out if we suppose an ellipsis, while, without an ellipsis, a very considerable part of the section is useless and void. According, then, to the familiar rule of construction, the statute should be read so as to render its language effective, and, by inserting the conjunction, this is done. So read, it creates the offense charged in the indictment. The motion to quash is, therefore, denied.

To the same effect is *United States* v. *Jenther* (13 Blatch., 335), which was a motion in arrest of judgment after a conviction under section 5467. In denying the motion the same learned judge says:

> The accused was indicted under section 5467 of the Revised Statutes, charged with embezzling a letter intrusted to him as a carrier, to be carried and delivered by him. * * * The section under which the indictment is framed is devoted to the creation of two kinds of offenses—one appertaining to letters, the other to contents of letters. In creating the offense of embezzling letters, the statute describes the subject of the offense as a letter intended to be conveyed by mail, or to be carried or delivered by a mail-carrier, * * * and which shall contain an article of value. This portion of the section is, to all appearances, complete, and there is nothing in it to indicate that it does not state all the ingredients of the offenses intended to be created thereby. The statute then passes to another subject, namely, the contents of letters, and creates certain offenses in respect thereto.

The case of *The United States* v. *Fralkenhainer* (21 Fed. Rep., 624), although not arising on the section in question, arises on section 5469, which presents the identical question presented here, and is decided by Judge Brewer, in a well-considered judgment, in exact conformity to the

view of section 5467 taken by Judge Benedict, in the cases above cited.

Opposed to these cases is *United States* v. *Long* (10 Fed. Rep., 879), in which Judge Pardee, in an opinion which does not seem well considered, disposes of the question now in hand in the way contended for by the defendant. But it is submitted that this case can not stand against the cases referred to in support of the opposite view, to which may be added *United States* v. *Baugh* (1 Fed. Rep., 784).

If we adopt the theory of the defense, we must conclude that Congress intended to abolish the time-honored distinction between embezzlement of an ordinary letter and one containing some article of value, thus punishing the latter with the mild penalty prescribed for the former, and ignoring the principle that one engaged in the execution of an unlawful purpose is answerable for all the effects which his act tends to produce, and does in fact produce—a principle upon which Congress undoubtedly proceeded in declaring that embezzling letters containing articles of

value should be punished more severely than embezzling letters not containing such articles, whether the offender knew the contents to be valuable or not.

But it is said that it repented Congress of having been so severe in punishing the offenses of secreting, embezzling, and destroying letters, etc., containing valuable matter, because the guilty purpose to secrete, embezzle, or destroy a letter containing valuable matter could not be ascribed to the delinquent, *who could not possibly know until he had opened it whether its contents were valuable or not!* So Congress, in this supposed maudlin mood, concluded to put all letters on the same plane, and to repeal the *harsh* distinction between secreting, embezzling, and destroying ordinary letters, etc., and letters, etc., containing valuable matter, making them all mere misdemeanors punishable by fine or imprisonment.

We are not told how Congress came to define in section 5467 the offenses of secreting, embezzling, and destroying letters, etc., containing articles of value without any intention of punishing

them, but, as if this needed no explanation whatever, we are told that Congress declared its intention to make this alleged change in the law by section 3891, in language which we have italicised in giving the section, as follows:

> SEC. 3891. Any person employed in any department of the postal service who shall unlawfully detain, delay, or open any letter, packet, bag, or mail of letters intrusted to him, or which has come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail messenger, route agent, letter-carrier, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General; or who shall secrete, embezzle, or destroy any such letter, packet, bag, or mail of letters, *although it does not contain any security for or assurance relating to money or other thing of value*, shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, or by both.

It is gravely argued that in reading this criminal statute the purpose to create a new offense can be drawn from the use of such indirect language as "*although it does not contain any security for or assurance relating to money or other thing of value.*" In a word, that it is rather to be supposed that Congress intended by this phraseology to create the *new* misdemeanors of secreting, embezzling, and destroying letters, etc., containing valuable matter than that it intended to punish the same offenses, which it has so elaborately

defined in section 5467, by the penalty denounced in that section.

But it may be asked what was the sense in creating the new misdemeanors of secreting, embezzling, or destroying letters, etc., containing valuable matter *if they were to be punishable like the offenses of secreting, embezzling, and destroying ordinary letters*? Clearly the ground was fully covered by the offenses of secreting, embezzling, and destroying letters of all kinds and other mail matter created by this same section 3891.

Viewing now section 3891 in connection with section 146 of the act of 1872, on which it is based, the mind can not hesitate to conclude that as section 146 of the act of 1872 referred by the words in italics to section 279 of that act, so does section 3891 refer, by the words italicized, to section 5467. We give the two sections side by side:

[Act approved June 8, 1872.]	[Revised Statutes.]
SEC. 146. That any person employed in any department of the postal service who shall unlawfully detain, delay, or open any letter, packet, bag, or mail of	SEC. 3891. Any person employed in any department of the postal service who shall unlawfully detain, delay or open any letter, packet, bag or mail of let-

letters intrusted to him, or which shall have come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route-agent, letter-carrier, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General; any such person who shall secrete, embezzle, or destroy any such letter, packet, bag, or mail of letters, as aforesaid, *which shall not contain any security for or assurance relating to money or other thing of value*, every such person shall, on conviction thereof, for every such offense, forfeit and pay a penalty of not exceeding five hundred dollars, or be imprisoned not more than one year, or both, at the discretion of the court.

ters intrusted to him, or which has come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route-agent, letter-carrier or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General; or who shall secrete, embezzle, or destroy any such letter, packet, bag or mail of letters, *although it does not contain any security for or assurance relating to money or other thing of value*, shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, or by both.

Another instance in the Revised Statutes of this mode of reference by one section to another is furnished by section 5469, which makes it penal for "any person" to steal, fraudulently obtain, or open valuable letters, etc., and then says, "*although not employed in the postal service*," manifestly pointing to those sections in which similar acts by persons employed in that service are made punishable.

Was it ever contended that the words "*although not employed in the postal service*" made

the acts described in the section also offenses when committed by persons employed in the postal service, and that the other provisions of the Revised Statutes covering the same ground were superfluous?

It is respectfully submitted that the questions certified should be answered in the affirmative.

WM. A. MAURY,
Assistant Attorney-General.

United States Supreme Court.

THE UNITED STATES

vs.

JOSEPH W. LACHER.

DEFENDANT'S POINTS.

BENJAMIN BARKER, JR.,
Counsel for Defendant,
120 Broadway.

BURGOYNE QUICK PRINTING CO., COR. WALKER & CENTRE STS., N. Y.

U. S. Supreme Court.

THE UNITED STATES

vs.

JOSEPH W. LACHER.

Statement.

Defendant, a post-office employee, was found guilty of the embezzlement of a letter containing an article of value on an indictment based upon § 5467, R. S.

And the cause coming on to be heard upon a motion in arrest of judgment and for a new trial before two judges in the Southern District of New York, at such hearings the following questions occurred.

I. Whether an offense against the United States under Section 5467, R. S., is charged in either the first or third count of the indictment?

II. Whether the embezzlement, by a person employed in a department of the Postal Service, of a letter intended to be conveyed by mail and containing an article of value, which shall have come into possession of such person is made an offense against the United States by Section 5467 of the Revised Statutes of the United States, and whether any penalty is prescribed for such embezzlement by said section?

Upon which questions the judges aforesaid were divided in opinion, and have certified the above questions to this Court.

Defendant's Points.

I. No penalty is prescribed for any offense under Section 5467, R. S. (the section under which defendant was found guilty) except for that of stealing or taking *out* of a letter its valuable contents by an employee in the Postal service.

U. S. vs. Long, 10 Fed. Rep., 879.

II. The simple embezzlement of a letter, whether the same shall contain anything of value or not, is provided for by Section 3891, R. S.

The language of that section is "*although* it does not contain, &c.," *a fortiori* if it *did* contain anything of value (as in the case at bar) the section is all the more applicable, and under that section a penalty is prescribed for the offense charged in the indictment.

III. The etymology of the language of Section 3891, R. S., sustains the defendant's position; "although" is the synonym for "notwithstanding," and is used to bring the adversative proposition into the greater prominence.

Webster's Dictionary.
Ogilvie's New Imperial Dictionary.
Soule on English Synonyms.

If one says "I shall go, notwithstanding it is not a pleasant day," the determination to go if it *is* pleasant is all the more strongly implied.

IV. A reasonable and just construction of Section 3891, R. S., would bring the defendant's offense within that section.

One may have embezzled a letter from a motive removed as far as possible from that of taking from the letter any article of value, in fact, may never have suspected that it contained any such article; should the mere fact that the letter *did* happen to contain something of value take his offense out of the category of *misdemeanors* (where his intent rightly fixed it) and raise it to the grade of a *felony!*

In point of fact there are but two grades of offenses covered by Sections 3891 and 5467, R. S.: the *first* is that of embezzling a letter, and the *second* is that of embezzling a letter and abstracting its valuable contents. If the letter contains nothing of value, the offense covered by Section 5467, R. S., *cannot* be committed. If the letter *does* contain something of value the offense provided for in Section 5467 *may* be committed, or *may not* be, and whether it be or not, will depend upon the *action* of the offender after the embezzlement shall have taken place, and in the case of this defendant his wrong-doing stopped with the embezzlement.

V. The language used by Congress in the sections under consideration must be deemed to be the legislative declaration of the Statute law on the subjects which they embraced, and when its meaning is plain the Courts cannot look to the statutes which have been revised to see if Congress erred in this revision.

U. S. vs. Bowen, 100 U. S., 513.
Vietor vs. Arthur, 104 U. S., 498,

and it is submitted that the meaning of the sections under consideration *is plain.*

But, if recourse be had to the acts revised: Section 146 of the Act of June 8, 1872, expressly provides a

penalty for the embezzlement of a letter *which shall not contain anything of value"*; while Section 279 of the same act may be construed to provide a penalty for the embezzlement of a letter containing an article of value.

In the revision, however, the language of *both* sections has been changed: Section 146 has been broadened so as to punish the offense of embezzling a letter *whether the same shall or shall not contain anything of value* (see § 3891, R. S.); while Section 279 has also been changed so that now "by no grammatical construction nor by any reasonable intendment" can it be made to cover the offense alleged in the First and Third Counts of the indictment (see § 5467, R. S.).

Before the revision the two sections were harmonious; as changed they are harmonious still.

VI. Section 5467, R. S., is a penal statute, it subjects an offender under its provisions to a term of five years' imprisonment and "must be expounded strictly againse offenders and liberally against the offense."

The doctrine is fundamental in English and American law that there can be no constructive offenses; that before a man can be punished his case must be *plainly* and *unmistakably within the statute, and if there be any fair doubt whether the statute embraces it, that doubt is to be resolved in favor of the accused.*

U. S. vs. Morris, 14 Peters, 464.
U. S. vs. Wiltberger, 5 Wheat., 76.
U. S. vs. Sheldon, 2 Wheat., 119.
1 Bishop's Criminal Law, Secs. 134, 145.

Both of the questions certified should be answered in the negative, and the judgment should be arrested.

BENJAMIN BARKER, JR.,
Counsel for Defendant.

(ACT APPROVED JUNE 8TH, 1872.)

SEC. 146. That any person employed in any department of the postal service who shall unlawfully detain, delay or open any letter, packet, bag or mail of letters intrusted to him, or which shall have come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route-agent, letter-carrier or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General; any such person who shall secrete, embezzle or destroy any such letter, packet, bag or mail of letters, as aforesaid, *which shall not* contain any security for or assurance relating to money or other thing of value, every such person shall, on conviction thereof, for every such offense, forfeit and pay a penalty of not exceeding five hundred dollars, or be imprisoned not more than one year, or both, at the discretion of the court.

SEC. 279. That any person employed in any department of the postal service who shall secrete, embezzle or destroy any letter, packet, bag or mail of letters intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail-messenger, route agent, letter-carrier or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General, and which shall contain any note, bond, draft, check, warrant, revenue stamp, postage stamp, stamped envelope, postal card, money order, certificate of stock, or other pecuniary obligation or security of the government, or of any officer or fiscal agent thereof, of

(REVISED STATUTES.)

SEC. 3891. Any person employed in any department of the postal service who shall unlawfully detain, delay or open any letter, packet, bag or mail of letters intrusted to him, or which has come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail messenger, route agent, letter-carrier or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General; or who shall secrete, embezzle or destroy any such letter, packet, bag or mail of letters, *although it does not* contain any security for or assurance relating to money or other thing of value, shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, or by both.

SEC. 5647. Any person employed in any department of the postal service who shall secrete, embezzle or destroy any letter, packet, bag or mail of letters intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail-carrier, mail messenger, route agent, letter-carrier or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster-General, and which shall contain any note, bond, draft, check, warrant, revenue stamp, postage stamp, stamped envelope, postal card, money order, certificate of stock or other pecuniary obligation or security of the government, or of any officer or fiscal agent thereof, of any de-